UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:09 CR 106 CAS
	)	
ROBIN CHRESTMAN,	)	
	)	
Defendant.	)	

ORDER ON MOTION REGARDING DISPOSITION OF BAIL MONEY

On March 14, 2012, this action came before the court for a hearing on, among other matters, defendant Robin Chrestman's "Opposition to Bond Forfeiture," which is considered by the court to be a motion that the bail money deposited with the registry of the court to secure her release from custody not be forfeited but be remitted to defense counsel John Rogers for his legal fee. (Doc. 91.) On March 15, 2012, the court conferred on the record with counsel for all parties, including attorney Rogers, regarding the facts that are relevant to the determination of this motion. (Doc. 100.) The facts set forth below are undisputed.

On February 3, 2009, defendant Chrestman was arrested by local authorities in this district for unlawfully possessing marijuana. (Docs. 2-1, 2-2 at 1.) Later that day a federal complaint was filed charging her with unlawfully possessing more than 50 kilograms of marijuana. United States v. Chrestman, No. 4:09 MJ 19 DDN, Doc. 1 (E.D. Mo. Feb. 3, 2009). The government moved for defendant's pretrial detention. Id. at Doc. 4. Defendant was taken into federal custody on February 4, 2009, in this district. On February 5, 2009, she was indicted for the offense charged in the complaint (Docs. 7, 8), and on February 9, 2009, the government requested defendant's continued detention. (Doc. 15.) Attorney Rogers entered his appearance to represent Chrestman on February 6, 2009. (Doc. 12.)

A detention hearing was held on February 9, 2009. On February 13, 2009, the court denied the motion for detention[1] and ordered defendant

[1]The government did not object to the release of defendant on an appearance bond. (Doc. 37) (noting in its opposition to defendant's post-release motion for permission to travel from California to Chicago, that "the government agreed to a bond for the defendant and the Court

released on conditions that included the execution of an appearance bond in the amount of $30,000, with $10,000 being deposited in cash with the registry of the court, and with defendant and her daughter signing the bond as sureties. (Doc. 18.) The conditions of release also included the requirement that defendant appear in court as required. (Docs. 31, 32.)

The required $10,000 partial security on the appearance bond was deposited in cash with the registry of the court on February 11, 2009. This cash was generated by the sale of defendant's own property. (Doc. 84 at 1)(defendant stating she sold many of her musical instruments and other property "to pay bond"). Defendant's daughter transmitted this $10,000[2] for the bond security to defendant's counsel, who then paid this $10,000 into the registry of the court as the required cash bail. Defendant's daughter and the defense firm agreed that, if the $10,000 bail money became available from the court, the law firm was to receive it from the court for the law firm's fee.

Defendant alone signed the appearance bond as surety on February 13, 2009. She was released from custody on that date. (Doc. 31.)

Pretrial proceedings occurred in the case. On September 1, 2009, defendant pled guilty and a sentencing date was set. (Doc. 72.) Ultimately, her sentencing was set for January 14, 2010; however, defendant Robin Chrestman failed to appear in court for sentencing. (Doc. 81.) Her failure to appear was willful. (Doc. 84 at 2)(defendant stating in a letter to the court, dated January 10, 2010, "I decided due to health, age, my art and my being, that it would be better to, as my one friend put it . . ., 'Vamanose'" (sic)). On that date the Pretrial Services Officer filed a petition for the issuance of an arrest warrant for defendant and for a hearing on whether defendant violated the conditions of her release. (Doc. 82.) An arrest warrant was issued.

Defendant Chrestman was a fugitive for two years; she was arrested on January 19, 2012 in the Eastern District of California. In that district court, a detention order was issued on January 26, 2012, and defendant was ordered brought to this court for further proceedings. (Docs. 86, 87, 88.)

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kindly granted that request").

[2]The defendant's daughter also transmitted other money to the defense law firm for partial payment of the law firm fee.

On February 22, 2012, attorney Donald T. Bergerson entered his appearance to represent defendant Chrestman in this case. (Docs. 94, 95.)

At the hearing held on March 14, 2012, defendant Chrestman did not dispute that she had willfully violated the conditions of release by not appearing before the court for sentencing on January 14, 2010. Defendant agrees that the government incurred expenses in locating her, taking custody of her, and bringing her back to this district. (Doc. 91 at 2.) On March 14, 2012, leave was granted to attorney Rogers to withdraw from representing defendant. (Doc. 97.)

The issue now before the court is whether the $10,000.00 previously deposited with the court to secure defendant's release from custody should be remitted to attorney Rogers to defray his fee and expenses for representing her in this case.

Congress has legislated that, if a defendant fails to appear in federal court as required, the court may declare that the bail money is forfeited to the United States. 18 U.S.C. § 3146(d). Federal Rule of Criminal Procedure 46 authorizes the court to declare a forfeiture if any condition of release is violated by the defendant. Fed. R. Crim. P. 46(f)(1)("The court must declare the bail forfeited if a condition of the bond is breached").

Rule 46 also provides that if an absconded defendant is later recaptured, the court may set aside a bail forfeiture, in whole or in part, if "it appears that justice does not require bail forfeiture." Fed. R. Crim. P. 46(f)(2)(B).

Whether justice requires forfeiture or remission of the bail money in this case depends upon factors which include (1) whether the defendant willfully failed to appear in court; (2) the expense, inconvenience, and delay to the government caused by the defendant's absconding; and (3) the amount of bail to be forfeited. Appearance Bond Sur. v. United States, 622 F.2d 334, 336 (8th Cir. 1980) (directing $99,000 of $100,000 bail to be remitted, where even though the defendant's failure to appear was willful, the defendant was apprehended after a four-hour search and pled guilty the next day).

All of the relevant factors in this case incline toward forfeiture without remission. Defendant was the only financial surety on her

appearance bond.[3] The $10,000 deposited with the registry of the court belonged to defendant and her daughter, resulting at least in part from the sale of defendant's personal property, and was provided to counsel for use immediately as security for defendant's release. (Doc. 84.) Defendant admits she willfully absconded. (Id.) She was a federal fugitive for two years until her capture, causing the government expense in locating, apprehending, and transporting her back to this court. The amount of the bail money deposited is one-third of the $30,000 amount of the appearance bond, for which defendant Chrestman remains responsible on the bond.

In Larson v. United States,[4] a corporate surety obligated itself on an appearance bond in the amount of $6,000 for the defendant's appearance in court. Three days after release, the defendant was arrested in a second jurisdiction for other criminal activity and was released by the second jurisdiction. Nevertheless, Larson did not appear in federal court on the first case and the district court declared a forfeiture on the surety's bond. With the defendant's cooperation, the surety took the defendant into custody and turned him over to law enforcement authorities. The surety sought remission of the forfeited bond on the grounds that the surety had spent time, money, and effort, including a $500 reward, to get the defendant into custody. The government objected to any remission. The district court denied the motion for remission, because the defendant had failed to surrender himself into custody. Larson, 296 F.2d at 169. The Eighth Circuit affirmed. Id. at 171-72.

In Bennett v. United States,[5] the Eighth Circuit affirmed the decision of the district court to deny remission of bail money because the defendant had willfully absented himself from court to avoid going to trial. 368 F.2d at 8-9.

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[3]The pending motion adverts to the court's pre-release order that defendant's daughter be a financial surety on the bond as a condition of release. (Doc. 91 referring to Doc. 18.) While the Order Setting Conditions of Release required defendant's daughter to sign as a surety, (Doc. 18 at 2), the court ordered defendant's release without the requirement of her daughter signing the bond.

[4]296 F.2d 167 (8th Cir. 1961).

[5]368 F.2d 7 (8th Cir. 1966).

In United States v. Harrell,[6] the Eighth Circuit reversed the district court's denial of remission where the defendant's failure to appear was not willful, as he was in the custody of another jurisdiction and the government claimed no injury. 415 F.2d at 1126.

In United States v. Parr,[7] the Fifth Circuit sustained the district court's determination that a third-party source of funds for bond security is more entitled to the remission of the bail money than is the estate of the deceased defendant. 594 F.2d at 443.

Defendant argues for remission because substantial cost and effort were expended by counsel to represent defendant in this case. The court accepts that statement as entirely true. However, the record also indicates that counsel was paid some other amount as partial payment of the defense firm's legal fee.

Defense counsel is an independent third-party to the appearance bond and the $10,000 bail money which was deposited with the registry of the court. Defense counsel was not a surety on the bond[8] and was not the original source of the bail money. By agreement with defendant's daughter, the bail money was to go to defense counsel, if it was released by the court. Instead of the bail money being released, it must be forfeited because the defendant willfully absconded and remained a fugitive for two years.

A remission to defense counsel of the bail money in the circumstances of this case would render both the court's order setting the financial conditions of release and the deposit of the money with the registry of the court without effect as financial reasons for the defendant not to flee. This would be adverse to the function of the financial deposit as an

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[6]415 F.2d 1125 (8th Cir. 1969)(per curiam).

[7]594 F.2d 440 (5th Cir. 1979).

[8]In Missouri, lawyers are prohibited by the rules of professional responsibility from being sureties on criminal case bonds, except in the cases of family members. See Mo. S. Ct. R. 4-1.8(e)("A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation"); and see Mo. S. Ct. R. 33.17(d)("A person shall not be accepted as a surety on any bail bond unless the person: . . . (d) [i]s not a lawyer").

inducement for the defendant to appear in court, as envisioned by Congress in the Bail Reform Act. 18 U.S.C. § 3142(c)(1)(B)(xi).

Therefore,

IT IS HEREBY ORDERED that the appearance bond executed by defendant Robin Chrestman in the amount of $30,000.00 is forfeited to the United States.

IT IS FURTHER ORDERED that the motion of defendant for the remission of the $10,000.00 bail money deposited with the registry of the court to defray defense counsel's fee (Doc. 91) is denied.

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on March 22, 2012.